

**FILED**

APR 20 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

1 UNITED STATES OF AMERICA, )  
 2 )  
 3 Plaintiff, )  
 4 )  
 5 v. )  
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 7 ANGELO TRENGALI, )  
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 9 Defendant. )  
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No. CR-05-00610-DLJ

**ORDER**

On March 3 and March 24, 2006, the Court conducted an evidentiary hearing on Defendant's Motion to Suppress. Alicia W. Fenrick appeared on behalf of the Government; Marianne C. Rossi appeared for the Defendant. Having considered the testimony at the hearing, arguments of counsel, the papers submitted, and the applicable law, the Court hereby issues this Order in support of the Court's April 5, 2006 Order, which DENIED the Defendant's Motion to Suppress.

**I. BACKGROUND**

Defendant Angelo Trengali is charged with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

The Defendant seeks to suppress all evidence obtained from the July 16, 2005 search of his vehicle, including a fully loaded SM11 Mac-11 weapon, and all other evidence discovered and obtained in the investigation. The search was made after the Defendant was stopped in his vehicle by Officer Dan Cleghorn (Cleghorn) of the Livermore Police Department on the basis of two vehicle code violations - obstruction of the vehicle's license plate and failure to use a turn signal.

1           Officer Cleghorn testified to the following events at the  
2 March 3, 2006 evidentiary hearing. In the early morning hours  
3 of July 16, 2005, he was assigned to a burglary suppression  
4 unit in the downtown area of Livermore. The assignment  
5 encompassed patrolling the downtown area and looking for  
6 anything suspicious, due to recent burglaries that had occurred  
7 in the area. Transcript of March 3, 2006 at 4:9-22. Officer  
8 Cleghorn was driving an unmarked vehicle and wearing plain  
9 clothes. At approximately 1:50 a.m., he spotted a vehicle in  
10 front of him that had mud on the body of the car, as well as on  
11 the license plate which obstructed the plate. Id. at 5:11-22.  
12 Cleghorn was approximately three car lengths from the vehicle  
13 and could not read the full license plate. Id. at 6:6-11 &  
14 14:19-25.

15           Cleghorn continued to follow the vehicle for several  
16 blocks, and then saw it turn into the parking lot of a  
17 restaurant without using the turn signal. Id. at 6:13-7:4. At  
18 this point Officer Cleghorn decided to stop the vehicle. Id.  
19 at 7:5-12 & 26:6-11.

20           The vehicle pulled into a parking space at the restaurant,  
21 and Officer Cleghorn activated his emergency lights and siren  
22 in order to conduct a traffic stop of the vehicle in the  
23 parking lot. Id. at 7:17-18. Officer Cleghorn approached the  
24 vehicle, informed the driver of the reasons why he was being  
25 stopped, and asked him why there was mud all over the vehicle.  
26 Id. at 7:21-24. The driver told Officer Cleghorn that his kids  
27 had been driving the vehicle earlier in the day and that they  
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1 had gotten mud all over the car. Id. at 8:1-3. Cleghorn  
2 considered this answer to be suspicious because in some spots  
3 the mud was still wet. Id. at 9:6, 11:11-13 & 18:10-25.

4 The driver handed over his license, and the name on the  
5 license was that of the Defendant, Angelo Trengali. Id. at  
6 8:7-10. Cleghorn saw that the address on the license was in  
7 Oakland, and asked the Defendant why he was in Livermore at  
8 this time of night. Id. at 8:24-9:2. The Defendant replied  
9 that he was dropping off his girlfriend. Id. at 9:2.

10 Officer Cleghorn proceeded to call dispatch from his radio  
11 for any information about the Defendant and his car, and was  
12 told by dispatch that the Defendant's drivers license was  
13 suspended. Id. at 10:3-8 & 41:21-22. Cleghorn testified that  
14 he had seen another car, which was occupied, and also parked in  
15 the lot, and that around this time he either asked dispatch for  
16 a cover officer or that dispatch sent a cover officer because  
17 he changed his status from "traffic stop" to "suspicious  
18 vehicle." Id. at 29:13-21. Officer Jeffrey Seymour (Seymour),  
19 who was also assigned to the burglary suppression unit in  
20 downtown Livermore, arrived within a few minutes. Id. at  
21 58:15-22 & Defendant's Exhibit (Def. Exh.) 1.

22 After learning that the Defendant was driving with a  
23 suspended license, Cleghorn asked the Defendant to step out of  
24 the vehicle and advised him that he had a suspended license.  
25 Id. at 10:10-15. Cleghorn had the Defendant walk to the back  
26 of the vehicle, patted him down for weapons, and had him take a  
27 seat on the curb next to the vehicle. Id. at 10:19-22.

1 At this point Cleghorn decided to tow the vehicle due to  
2 the fact that the Defendant was driving with a suspended  
3 license. Id. at 10:24-25. Cleghorn testified that according  
4 to Livermore Police Department policy, if a car is stopped and  
5 it is discovered that the driver is driving on a suspended  
6 license, it is routine procedure to impound the driver's  
7 vehicle. Id. at 19:7-13. There may be circumstances where a  
8 driver's license is suspended and officers decide not to  
9 impound the vehicle, such as where there is approval from a  
10 supervisor to do otherwise, or where it would be unsafe to  
11 impound the vehicle. Id. at 19:11-13 & Government's Exhibit  
12 (Govt. Exh.) B at 2.

13 Officer Cleghorn also testified that according to  
14 Livermore Police Department policy, officers conduct an  
15 inventory search of all vehicles before they are towed. Id. at  
16 19:21-20:4 & Govt. Exh. B at 7-8. The purpose of this policy  
17 is to secure property, protect the police department from false  
18 claims and to protect persons from dangerous items located  
19 inside vehicles. Id. at 19:23-20:4, 22:14-23 & Govt. Exh. B at  
20 8.

21 After making the decision to impound the Defendant's  
22 vehicle, Cleghorn asked the Defendant if there was anything  
23 illegal in the vehicle. Id. at 11:7-8. The Defendant  
24 hesitated and looked away, eventually replying "no." Id. at  
25 11:8-9. Cleghorn handcuffed the Defendant and had him sit back  
26 down on the curb while he conducted the inventory search. Id.  
27 at 11:14-16.

1 Cleghorn proceeded to search the Defendant's vehicle,  
2 finding the following: a loaded SM11 Mac-11 semi-automatic  
3 weapon under a sweatshirt on the passenger seat with what  
4 appeared to be a silencer attached to the barrel of the weapon,  
5 and a canvas bag attached to the ejection port; a magazine  
6 inserted into the grip of the gun; two ski masks, one located  
7 in the center console and the other found in the driver side  
8 front pocket door; a pair of black leather gloves found on the  
9 driver's seat; and a tan canvas bag located in the trunk, which  
10 contained 2 two-way radios, two pairs of sunglasses,  
11 binoculars, a rental car receipt from Dollar Rent a Car in  
12 Defendant's name, and a photograph of a white GMC Yukon. Id.  
13 at 12:7-13 & Def. Exh. 2 at 6-7.

14 Officer Cleghorn testified that the Livermore Police  
15 Department does not have a standard practice regarding whether  
16 to do an inventory search before or after issuing a citation or  
17 making an arrest for driving with a suspended license. Id. at  
18 21:4-20. In most cases, officers try to get the inventory  
19 search done while the tow truck is coming so that the tow  
20 operator does not have to wait. Id. at 21:12-14. Sometimes  
21 citations are not issued until after the tow truck is gone.  
22 Id. at 21:15-20.

23 In this case, Officer Cleghorn did the inventory search  
24 first. He testified that due to the circumstances that arose  
25 from the inventory search, specifically finding the weapon in  
26 the vehicle, he proceeded to arrest the Defendant for several  
27 weapons violations under California law and did not give the  
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1 Defendant a citation for driving with a suspended license. Id.  
2 at 20:15-21:3.

3 Officer Seymour testified to the following events at the  
4 March 3, 2006 evidentiary hearing. On July 16, 2005, he was  
5 assigned to a burglary suppression unit in downtown Livermore.  
6 Id. at 77:14-20. Shortly after 1:50 a.m., police dispatch  
7 advised him to respond to the area of the Celadon Restaurant to  
8 cover Officer Cleghorn. Id. at 78:2-12. Officer Seymour  
9 arrived at the restaurant parking lot at approximately 1:57  
10 a.m. Id. at 79:8-10 & Def. Exh. 1.

11 Upon his arrival, Officer Seymour walked up to the  
12 passenger side of Officer Cleghorn's unmarked car. Id. at  
13 79:12-17. Officer Cleghorn was standing at the driver's side  
14 door of another vehicle. Id. at 79:19-23.

15 Dispatch asked Officer Seymour to verify the stopped  
16 vehicle's license plate, and in the process of providing that  
17 information, Officer Seymour observed that the vehicle's rear  
18 was covered in splatters of mud and that there was mud on the  
19 rear license plate. Id. at 80:21-81:17. Officer Seymour could  
20 read the rear plate from approximately 15 feet away, as he  
21 stood next to Officer Cleghorn's car. Id. at 81:11-15.

22 Officer Cleghorn asked the Defendant to step out of his  
23 vehicle, then patted him down for safety reasons and had him  
24 sit down on the curb, with Seymour standing nearby. Id. at  
25 81:19-82:18. Officer Seymour heard Cleghorn ask the Defendant  
26 if there was anything illegal in the vehicle that he should be  
27 aware of. Id. at 84:5-6. The Defendant did not answer the  
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1 first time, he just looked away. Id. at 84:6-8. Officer  
2 Seymour testified that at the time of these events, he felt the  
3 situation did not seem right - the Defendant was not being  
4 cooperative and the mud on the vehicle looked like it had been  
5 placed there because the tires were clean and the mud was still  
6 wet. Id. at 84:11-20.

7 Officer Cleghorn then had the Defendant stand up while he  
8 placed him in handcuffs. Id. at 84:8-9. Seymour testified  
9 that around this time he heard Cleghorn tell the Defendant that  
10 he was going to search the vehicle and tow it. Id. at 83:21-  
11 84:2. Cleghorn then proceeded to search the vehicle. Id. at  
12 85:4-6. Officer Cleghorn found a weapon on the front passenger  
13 seat, at which point they called for another unit before  
14 completing the vehicle search. Id. at 85:11-24.

15 Officer Seymour stayed at the scene for another 15-20  
16 minutes, during which time he completed the tow slip/CHP 180.  
17 Id. at 86:12-16 & Govt. Exh. C.

18 Defendant Trengali testified at the March 24, 2006  
19 evidentiary hearing, and disputed two areas of the account of  
20 the events by the officers:

- 21 • The Defendant testified that the mud splatters on his  
22 vehicle where not obstructing the characters of the rear  
23 license plate.
- 24 • The Defendant testified that he used his turn signal when  
25 turning into the restaurant parking lot.

## II. LEGAL STANDARDS

### 1. Vehicle/Traffic Stops

The Fourth Amendment requires only reasonable suspicion in the context of investigative traffic stops. United States v. Lopez-Soto, 205 F.3d 1101, 1104-05 (9th Cir. 2005). A law enforcement officer may conduct a traffic stop if there is reasonable suspicion to conclude that a traffic violation has occurred. United States v. Willis, 431 F.3d 709, 714-15 (9th Cir. 2005).

The constitutional reasonableness of a traffic stop does not depend on the actual motivations of the individual officers involved. Whren v. United States, 517 U.S. 806, 813 (1996). A stop is permissible so long as "the circumstances, viewed objectively, justify that action." Id.

### 2. Inventory Search Exception to Warrant Requirement

Law enforcement officers may conduct an inventory search of a lawfully impounded vehicle without a warrant. South Dakota v. Opperman, 428 U.S. 364, 369 (1976); see also United States v. Wanless, 882 F.2d 1459, 1463 (9th Cir. 1989); United States v. Feldman, 788 F.2d 544, 550 (9th Cir. 1986). The reasons for conducting the inventory search are threefold: (1) the protection of the vehicle's owner's property; (2) the protection of the police against claims by the owner; and (3) the protection of the police from potential danger. Wanless, 882 F.2d at 1463 (citing Opperman, 428 U.S. at 369).



1 The government must show that the inventory search was  
2 conducted in accordance with standard local police procedures.  
3 United States v. Johnson, 936 F.2d 1082, 1084 (9th Cir. 1991).

4 3. Exclusionary Rule and Fruit of the Poisonous Tree

5 The exclusionary rule, which bars the admission of  
6 evidence obtained in violation of the Constitution, extends  
7 beyond the direct products of government misconduct to evidence  
8 derived from the illegal conduct, or "fruit of the poisonous  
9 tree." Nardone v. United States, 308 U.S. 338, 341 (1939).

10 The Supreme Court has developed three exceptions to the  
11 fruit of the poisonous tree doctrine which allow the admission  
12 of evidence derived from official misconduct - the independent  
13 source exception, the attenuated basis exception, and the  
14 inevitable discovery exception.

15 4. Inevitable Discovery Exception

16 The inevitable discovery exception allows the introduction  
17 of illegally obtained evidence if the government can show by a  
18 preponderance of the evidence that the tainted evidence would  
19 inevitably have been discovered through subsequent and  
20 foreseeable lawful conduct. Nix v. Williams, 467 U.S. 431, 444  
21 (1984). This doctrine requires that the fact or likelihood  
22 that makes the discovery inevitable arises from circumstances  
23 other than those disclosed by the illegal search itself.  
24 United States v. Boatwright, 822 F.2d 862, 864-65 (9th Cir.  
25 1987).

### III. DISCUSSION

#### A. Legality of Initial Vehicle/Traffic Stop

The Defendant argues that the initial stop of his vehicle was unlawful because there was neither probable cause nor reasonable suspicion for Officer Cleghorn to make the stop.

First, the Defendant maintains that his rear license plate fully complied with California Vehicle Code Section 5201, which requires that a license plate be clearly visible where mounted on the vehicle and that the plate be clearly legible. The Defendant testified at the March 24, 2006 evidentiary hearing that the mud splatters on his vehicle did not obstruct the characters of the rear license plate. Defendant also argues that photos of his vehicle and license plate, taken by the government at the time of his arrest, show that his vehicle was in compliance with Section 5201.

The government responds that Officer Cleghorn was unable to read the Defendant's license plate from approximately three car lengths away because mud was stuck on the surface of the plate. Cleghorn testified at the March 3, 2006 evidentiary hearing to this effect. The government further argues that even if the Defendant is correct that mud did not obstruct the license plate, a mere mistake of fact will not render a stop illegal if objective facts known to the officer reasonably support his factual conclusion. The government claims that it is undisputed that the Defendant was driving in a business area in the early hours of the morning, with mud covering his vehicle, and these facts reasonably support his conclusion that

1 the license plate was obstructed.

2 Defendant also maintains that he did not violate  
3 California Vehicle Code Sections 22107 and 22108 by failing to  
4 use a turn signal before turning right into a parking lot that  
5 night. Defendant asserts that there were no other vehicles on  
6 the roadway that could have been affected by his right turn,  
7 including the vehicle Officer Cleghorn was driving, so he was  
8 not required to use his signal under the Vehicle Code. In any  
9 event, Defendant testified at the March 24, 2006 evidentiary  
10 hearing that he used his turn signal when turning into the  
11 restaurant parking lot.

12 The government responds that California Vehicle Code  
13 Section 22107 requires that a signal be used "in the event any  
14 other vehicle may be affected by the movement," and that  
15 Officer Cleghorn was driving behind Defendant's vehicle and  
16 could have been "affected by the movement" of Defendant's  
17 vehicle. In any event, Cleghorn testified at the March 3, 2006  
18 evidentiary hearing that the Defendant failed to use a turn  
19 signal when turning into the restaurant's parking lot.

20 A law enforcement officer may conduct a traffic stop if  
21 there is reasonable suspicion to conclude that a traffic  
22 violation has occurred. United States v. Willis, 431 F.3d 709,  
23 714-15 (9th Cir. 2005). Testimony from the March 3, 2006  
24 evidentiary hearing establishes that Officer Cleghorn had  
25 reasonable suspicion to conclude that one or more traffic  
26 violations occurred during his observation of Defendant's  
27 vehicle on the morning of July 16, 2005.

1           Officer Cleghorn and Officer Seymour both testified that  
2 the vehicle's rear was covered in splatters of mud and that  
3 there was mud on the rear license plate. Photos of the license  
4 plate, taken by the government at the time of the incident,  
5 confirm that there was mud on portions of the plate. Govt.  
6 Exhs. A & D. The condition of the plate supports a reasonable  
7 conclusion that the characters on the plate can be made out  
8 when one is near the plate, as well as a reasonable conclusion  
9 that the characters on the plate are obstructed when one is  
10 driving behind the plate at a distance of approximately three  
11 car lengths. These circumstances establish that Cleghorn had  
12 at least a reasonable suspicion sufficient to effectuate the  
13 traffic stop on the basis of an obstructed plate.

14           As to the turn signal, Cleghorn testified that the  
15 Defendant failed to use his turn signal when required by law,  
16 and the Defendant testified that he did use his turn signal and  
17 argues that Officer Cleghorn's vehicle was not close enough to  
18 require use of a turn signal. The Court observed the testimony  
19 and notes that Officer Cleghorn's statements on this issue were  
20 consistent throughout the incident (reflected in his  
21 communications with police dispatch, the Defendant, and Officer  
22 Seymour on the morning of July 16, 2005); in the report he  
23 wrote afterwards; and during his testimony at the March 3, 2006  
24 evidentiary hearing. On the other hand, the Court notes that  
25 the testimony of Defendant Trengali, in particular as to what  
26 he was doing that morning and how the mud got on his rental  
27 car, is not credible. The Court credits Officer Cleghorn's  
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1 testimony as reliable and finds that there was reasonable  
2 suspicion for the traffic stop on the basis of the turn signal  
3 violation.

4 Given these findings, and noting that either one of the  
5 traffic violations in this case constituted grounds to stop  
6 Defendant's vehicle, the Court concludes that the initial stop  
7 of the Defendant's vehicle did not violate the Defendant's  
8 constitutional rights.

9 B. Legality of Officer Cleghorn's Inventory Search

10 Notwithstanding whether or not the initial traffic stop  
11 was valid, the Defendant argues that the inventory search of  
12 his vehicle was not authorized. The inventory search was  
13 premised upon Officer Cleghorn's decision to tow the  
14 Defendant's vehicle upon learning that the Defendant's license  
15 was suspended. However, the Defendant maintains that he was  
16 not served with notice of the license suspension, that Officer  
17 Cleghorn knew of Defendant's lack of notice upon receiving  
18 Defendant's driving record, and therefore he could not be  
19 arrested for driving with a suspended license.

20 The government responds that whether or not Defendant  
21 could have been arrested for driving with a suspended license  
22 is irrelevant, because his car could have been towed regardless  
23 of whether he was arrested. The government argues that  
24 California Vehicle Code Section 14602.6 makes clear that an  
25 officer may remove and seize a vehicle when an individual is  
26 driving with a suspended or revoked license, and that the  
27 officer does not need to first arrest the person for driving

1 with a suspended license. Furthermore, California Vehicle Code  
2 Section 22651 provides for circumstances where a vehicle may be  
3 towed due to driving with a suspended license, although there  
4 has been no arrest of the driver for the suspended license  
5 violation.

6 It is the government's burden to show that the inventory  
7 search was conducted in accordance with standard local police  
8 procedures. United States v. Johnson, 936 F.2d 1082, 1084 (9th  
9 Cir. 1991). The evidence admitted at the March 3, 2006  
10 evidentiary hearing establishes that this burden has been met.

11 Officer Cleghorn testified that he made the decision to  
12 tow the Defendant's vehicle due to the fact he was driving with  
13 a suspended license. Transcript at 10:24-25. Officer Cleghorn  
14 explained that the Defendant's license was suspended under  
15 suspension service code "H," which means that even though the  
16 suspended license notification is not acknowledged by  
17 signature, the driver is deemed to be aware of the suspension  
18 because a certified letter has been sent to the driver and not  
19 returned within a designated time period. Id. at 52:16-22.

20 When the driver has notice of the license suspension, or notice  
21 can be presumed, it is the standard practice of the Livermore  
22 Police Department to tow and impound the driver's vehicle.  
23 Govt. Exh. B at 1.

24 Officer Cleghorn testified that even if Defendant's  
25 license had been suspended under code "A," which means that  
26 there is no presumption of notice or knowledge of the license  
27 suspension, the Defendant's vehicle would still be subject to  
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1 towing under Livermore Police Department Policy and California  
2 Vehicle Code Section 22651(p). Transcript at 73:9-74:19 &  
3 Govt. Exh. B at 1-2. Thus, no matter what code a license is  
4 suspended under, the driver's vehicle may be towed. Id. at  
5 74:17-19.

6 Officer Cleghorn testified that according to Livermore  
7 Police Department policy, officers conduct an inventory search  
8 of all vehicles before they are towed. Id. at 19:21-20:4 &  
9 Govt. Exh. B at 7-8. He testified that the Livermore Police  
10 Department does not have a standard practice regarding whether  
11 to do an inventory search before or after issuing a citation or  
12 making an arrest for driving with a suspended license. Id. at  
13 21:4-20. In this case, Officer Cleghorn did the inventory  
14 search first. Due to the circumstances that arose from the  
15 inventory search, specifically finding the weapon in the  
16 vehicle, Officer Cleghorn proceeded to arrest the Defendant for  
17 weapons violations and did not give the Defendant a citation or  
18 make an arrest for driving with a suspended license. Id. at  
19 20:15-21:3.

20 Given that Officer Cleghorn was proceeding according to  
21 standard practice when he made the decision to tow the  
22 Defendant's vehicle, and when he subsequently conducted the  
23 vehicle search, the Court concludes that Officer Cleghorn's  
24 search of the vehicle did not violate the Defendant's  
25 constitutional rights.

26 C. Inevitable Discovery

27 Even if it can be argued that the search of Defendant's  
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1 vehicle cannot be justified as an inventory search, the  
2 evidence is subject to the inevitable discovery doctrine. For  
3 example, in United States v. Aguilar, 301 F. Supp. 2d 1263  
4 (D.N.M. 2004), the Court held that even if the on-site post-  
5 arrest search of defendant's automobile was conducted for  
6 investigatory rather than administrative purposes, and thus  
7 could not be characterized as a valid inventory search, the  
8 weapon discovered as a result of the search was admissible  
9 under the inevitable discovery rule. In Aguilar, the  
10 defendant's vehicle was lawfully impounded after his arrest and  
11 would have been subject to a lawful inventory search at that  
12 point. Id. A similar situation exists in this case.

13 Officer Cleghorn exhibited a clear intention to tow the  
14 Defendant's vehicle for the suspended license violation before  
15 he searched it and arrested Defendant for weapons violations.  
16 Before searching the Defendant's vehicle, Officer Cleghorn  
17 informed the Defendant of the suspended license violation.  
18 Officer Cleghorn testified that he made the decision to impound  
19 the vehicle after having the Defendant step out of the vehicle  
20 and advising him that he had a suspended license. Id. at  
21 10:10-25. Officer Seymour testified that before the vehicle  
22 search started, he heard Cleghorn tell the Defendant that he  
23 was going to search the vehicle and tow it. Id. at 83:21-84:2.  
24 The Defendant's vehicle clearly would have been subject to a  
25 lawful inventory search once towed and impounded. Thus, the  
26 evidence in the vehicle is subject to the inevitable discovery  
27 doctrine and admissible on this separate basis as well.



IV. CONCLUSION

For the foregoing reasons, this Order is issued in support of the Court's April 5, 2006 Order, which DENIED the Defendant's Motion to Suppress.

IT IS SO ORDERED

Dated: April 20, 2006



D. Lowell Jensen  
United States District Judge